

Chapter 5

Indiana Library Laws and Other Laws Affecting Libraries

Indiana Public Libraries must follow all state and federal laws.

The **Indiana Code (IC)** has a chapter dedicated to public libraries in Indiana, **IC 36-12** <http://www.in.gov/legislative/ic/code/title36/ar12/>. This is commonly referred to as the “**Library Law**”. Indiana public library directors, staff, and trustees need to be very familiar with this section of the **Indiana Code**.

Indiana public libraries must also be familiar with the **Indiana Administrative Code (IAC) 590**, www.in.gov/legislative/iac/title590.html, which lists the public library administrative rules that libraries must follow.

Other laws that must be followed are listed in the **Indiana Code** and are followed by all political subdivisions in Indiana. These include, but are not limited to:

- public purchasing
- public works
- Indiana open door law
- budgeting
- bonding
- real property
- building and fire codes

There are also federal laws that must be followed such as:

- Family and Medical Leave Act (required for public employers with at least 50 employees within a 75 mile radius), <http://www.dol.gov/dol/compliance/comp-fmla.htm>
- Americans with Disabilities Act, <http://www.usdoj.gov/crt/ada/adahom1.htm>
- Fair Labor Standards Act, <http://www.dol.gov/dol/compliance/comp-flsa.htm>
- Equal Employment Opportunity Act, <http://www.dol.gov/dol/compliance/comp-eeo.htm>

When there is a legal question concerning laws the library must follow, **your library attorney should be contacted**. State Board of Accounts will accept the opinion of your library attorney, when that opinion is in writing from the attorney and not in direct conflict with the law.

The Indiana State Library has hired a lawyer to interpret Indiana law as it relates to libraries; however, each library may still want to have their own attorney and use their own attorney for the final word on legal issues.

Indiana Open Door Law

The Open Door Law, originally passed by the Indiana General Assembly in 1977, was enacted to permit the citizens of Indiana access to meetings held by public agencies. By providing the public with an opportunity to attend and observe meetings, the public may witness government in action and more fully participate in the governmental process. The Open Door Law will serve these purposes if the public understands the provisions of this statute.

The Handbook on Public Access sets forth the basic elements of the Open Door Law and provides answers to commonly asked questions. In order to find answers to more specific questions, please consult the provisions of the Indiana Code (IC 5-14-1.5-1 *et. seq.*).

- Public Access Counselor <http://www.in.gov/pac/>
- The Handbook on Public Access is included in this chapter or may be found on the Web at http://www.in.gov/pac/files/pac_handbook.pdf
- Past advisory opinions can also be found on the web at <http://www.IN.gov/pac/advisory/index.html>

The State has a Public Access Counselor, who is available to answer questions about the Open Door Law.

Heather Neal
Public Access Counselor
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Phone: 317-233-9435 or 1-800-228-6013
Fax: 317-233-3091

F. Americans with Disabilities Act (ADA)

<http://www.usdoj.gov/crt/ada/adahom1.htm>

The intent of the law is to provide the person with a disability equal access to library facilities, information, computer technology, programs, services, and other resources.

The Americans with Disabilities Act (ADA) was passed July 26, 1990 as Public Law 101-336 (42 U.S.C. Sec. 12101 et seq) and became effective on January 26, 1992.

The ADA is landmark federal legislation that opens up services and employment opportunities to the 43 million Americans with disabilities. The law was written to strike a balance between the reasonable accommodation of citizens' needs and the capacity of private and public entities to respond. It is not an affirmative action law but is intended to eliminate illegal discrimination and level the playing field for disabled individuals.

The Americans with Disabilities Act extends civil rights protection to people with disabilities. These rights include equal access to employment, public services, public accommodations provided by public and private entities, transportation, and telecommunications resources.

The law is comprised of five titles that prohibit discrimination against disabled persons within the United States. Titles I and II are the primary sections that affect libraries.

Title I Prohibits employers, including cities and towns, from discriminating against qualified job applicants and workers who are or who become disabled.

The law covers all aspects of employment including the application process and hiring, training, compensation, advancement, and any other employment term, condition, or privilege.

It requires that you provide "reasonable" accommodation to employees that may include special equipment to enable them to do their job.

Title II Prohibits state and local governments from discriminating against disabled persons in their programs and activities.

Title II also sets forth the applicable structural accessibility requirements for public entities.

Public Libraries with non-accessible buildings may meet this requirement by providing home delivery of materials.

ADA Home Page

Information and Technical Assistance on the Americans with Disabilities Act

<http://www.usdoj.gov/crt/ada/adahom1.htm>

Sales in Libraries

I. Friends of the library groups generally

IC 36-12-3-5 "Real or personal property; acquisition; disposal Sec. 5. (a) The library board may: (1) acquire real or personal property by purchase, devise, lease, condemnation, or otherwise; and (2) own any real or personal property for purposes of the public library. (b) The library board may: (1) sell; (2) exchange; or (3) otherwise dispose of; real property no longer needed for library purposes in accordance with IC 36-1-11. (c) The library board may transfer personal property no longer needed for library purposes for no compensation or a nominal fee to an Indiana nonprofit library organization that is: (1) tax exempt; and (2) organized and operated for the exclusive benefit of the library disposing of the property; without complying with IC 36-1-11 (which requires a governmental unit to obtain an appraisal and hold a public hearing on the disposal of the property)."

A Friends of the library group must be registered with the Indiana Secretary of State as a nonprofit corporation in order for the library to donate personal property to it. (Registering for tax-exempt status under Internal Revenue Code Section 501(c) (3) is part of the registration process.) A Friends group will need to apply to the Indiana Department of Revenue (IDOR) using Form BT-1 for a sales tax ID number. A Friends group will report to IDOR annually, quarterly or monthly depending on how much sales tax the group estimates on the BT-1 that it will collect. Generally, a 12-month/year business operation will report and pay sales tax monthly.

II. Book sales lasting fewer than 31 days in one calendar year

Bulletin #10 (see below for link) Application of Sales Tax to Nonprofit Organizations (or Friends Group):

"Sales of tangible personal property by qualified nonprofit organizations carried on for a total of not more than thirty (30) days in a calendar year and engaged in as a fund raising activity to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax...."

If a Friends group sells books or other items over less than thirty-one days in a calendar year, it is exempt from sales tax. Assume that a Friends group is selling tangible personal property inside the library and the estimated length of sales days is less than 31 in the calendar year. If the group was to leave the premises for a lunch break and left a sign instructing a patron to take the merchandise to the library's check-out desk to make the purchase, the library would not collect sales tax. According to the IDOR, the library would be assisting the nonprofit in the sales of the nonprofit's merchandise and thus, would not need to collect sales tax.

III. Book sales/Friends bookstores sales carried on more than 30 days in a calendar year

Bulletin #10 (see below for link)

"If an organization conducts sales or fund raising activities during thirty-one (31) or more days in a calendar year (not necessarily consecutive), it is a retail merchant and must {charge}, collect {and report} sales tax on all sales made during the calendar year."

Similarly, if the library was assisting the friends group with its sales, the library also would collect the tax.

IV. Sales of merchandise by a Library

Bulletin #4 (See Link Below) Sales to and By the State of Indiana

"Sales of tangible personal property to the general public in the ordinary course of operations by the state of Indiana or its local governments are generally subject to sales tax. For example, the sale of key chains or license cases by a license branch is taxable. The state may purchase any

property to be resold exempt from tax, but must collect the tax from the purchase at the point of sale."

Libraries selling items to patrons (including but not limited to removable computer storage devices, office supplies (but not copies of public records, computer printouts or library cards)) must charge and collect sales tax.

V. Sales Tax Bulletin #4 Sales To and By the State of Indiana, Its Political Subdivisions, the United States Government and Its Agencies

<http://www.in.gov/dor/reference/bulletins/sales/pdf/sib04.pdf>

VI. Sales Tax Bulletin #10 Application of Sales Tax to Nonprofit Organizations

<http://www.in.gov/dor/reference/bulletins/sales/pdf/sib10.pdf>

Please check with your library's attorney, if further information is needed.

[Excerpted from HEA 1001]

SECTION 163. IC 6-1.1-17-20, AS AMENDED BY P.L.1-2006, SECTION 136, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. (a) This section applies:

- (1) to each governing body of a taxing unit that is not comprised of a majority of officials who are elected to serve on the governing body; and
- (2) if the **percentage increase in the** proposed ~~property tax~~ levy:

~~(A) budget~~ for the taxing unit ~~(other than a public library)~~ for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the taxing unit for the current the result of:

~~(A) the assessed value growth quotient determined under IC 6-1.1-18.5-2 for the ensuing calendar year; or minus~~

~~(B) for the operating budget of a public library for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the operating budget of the public library for the current calendar year.~~

(B) one (1).

(b) As used in this section, "taxing unit" has the meaning set forth in IC 6-1.1-1-21, except that the term does not include:

- (1) a school corporation; or
- (2) an entity whose tax levies are subject to review and modification by a city-county legislative body under IC 36-3-6-9.

(c) This subsection does not apply to a public library. If:

- (1) the assessed valuation of a taxing unit is entirely contained within a city or town; or
 - (2) the assessed valuation of a taxing unit is not entirely contained within a city or town but the taxing unit was originally established by the city or town;
- The governing body shall submit its proposed budget and property tax levy to the city or town fiscal body. The proposed budget and levy shall be submitted at least fourteen (14) days before the city or town fiscal body is required to hold budget approval hearings under this chapter.

(d) ~~This subsection does not apply to a public library.~~ If subsection (c) does not apply, the governing body of the taxing unit shall submit its proposed budget and property tax levy to the county fiscal body in the county where the taxing unit has the most assessed valuation. The proposed budget and levy shall be submitted at least fourteen (14) days before the county fiscal body is required to hold budget approval hearings under this chapter.

~~(e) This subsection applies to a public library. The library board of a public library subject to this section shall submit its proposed budget and property tax levy to the fiscal body designated under IC 36-12-14.~~

~~(f) Subject to subsection (g),~~ (e) The fiscal body of the city, town, or county (whichever applies) ~~or the fiscal body designated under IC 36-12-14 (in the case of a public library)~~ shall review each budget and proposed tax levy and adopt a final budget and tax levy for the taxing unit. The fiscal body may reduce or modify but not increase the proposed budget or tax levy.

~~(g) A fiscal body's review under subsection (f) is limited to the proposed operating budget of the public library and the proposed property tax levy for the library's operating budget.~~

SECTION 164. IC 6-1.1-17-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 20.5. (a) This section applies to the**

governing body of a taxing unit unless a majority of the governing body is comprised of officials who are elected to serve on the governing body.

(b) As used in this section, "taxing unit" has the meaning set forth in IC 6-1.1-1-21, except that the term does not include an entity whose tax levies are subject to review and modification by a city-county legislative body under IC 36-3-6-9.

(c) If:

(1) the assessed valuation of a taxing unit is entirely contained within a city or town; or

(2) the assessed valuation of a taxing unit is not entirely contained within a city or town but the taxing unit was originally established by the city or town;
the governing body of the taxing unit may not issue bonds or enter into a lease payable in whole or in part from property taxes unless it obtains the approval of the city or town fiscal body.

(d) This subsection applies to a taxing unit not described in subsection (c). The governing body of the taxing unit may not issue bonds or enter into a lease payable in whole or in part from property taxes unless it obtains the approval of the county fiscal body in the county where the taxing unit has the most net assessed valuation.

SECTION 176. IC 6-1.1-18.5-10.3, AS AMENDED BY P.L.231-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 10.3. (a) **This subsection does not apply to property taxes first due and payable after December 31, 2008.** The ad valorem property tax levy limits imposed by section 3 of this chapter do not apply to ad valorem property taxes imposed by a library board for a capital projects fund under IC 36-12-12. However, the maximum amount that is exempt from the levy limits under this section may not exceed the property taxes that would be raised in the ensuing calendar year with a property tax rate of one and thirty-three hundredths cents (\$0.0133) per one hundred dollars (\$100) of assessed valuation.

(b) **This subsection does not apply to property taxes first due and payable after December 31, 2008.** For purposes of computing the ad valorem property tax levy limit imposed on a library board under section 3 of this chapter, the library board's ad valorem property tax levy for a particular calendar year does not include that part of the levy imposed under IC 36-12-12 that is exempt from the ad valorem property tax levy limits under subsection (a).